

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VICTORIA'S SECRET STORES BRAND	:	
MANAGEMENT, INC.,	:	
	:	
Plaintiff,	:	Case No. 2:16-cv-00712
	:	
v.	:	Judge James L. Graham
	:	
REDBUBBLE, INC., et al.,	:	Magistrate Judge Elizabeth
	:	Preston Deavers
Defendant.	:	

**DECLARATION OF CORINA DAVIS IN SUPORT OF
REDBUBBLE INC.'S MOTION TO DISMISS**

I, Corina N. Davis, declare:

1. I am the General Counsel of Redbubble Inc. ("Redbubble"), the named defendant in this lawsuit. I have personal knowledge of the facts set forth in this Declaration and can testify competently to those facts.

2. Redbubble is a Delaware corporation, and a wholly-owned subsidiary of Redbubble Limited, an Australian public company limited by shares. Founded in 2006, Redbubble has its sole office in California.

3. Much like eBay or the Amazon Marketplace, Redbubble hosts an Internet marketplace platform (located at www.redbubble.com) where independent third-party artists can upload and sell their creative works to consumers around the world. Artists who sell their creative works on the Redbubble platform can elect to have their works printed and sold on various types of products, including t-shirts and mugs. Redbubble's platform also connects third-party artists that sell products on Redbubble.com with third-party fulfillers who manufacture the

artists' products or who deliver those products to customers.

4. Redbubble does not design or upload creative works to the marketplace; it does not review or approve the content offered for sale by users prior to upload; it does not manufacture or deliver products bearing those creative works; and it does not sell products via the Redbubble marketplace. In fact, from the time a user initiates the process of uploading a work to the marketplace to the point at which such work is offered for sale, the process is entirely user directed (as described below) and automated by the Redbubble platform software with no active involvement by Redbubble personnel. When a consumer makes a purchase through the marketplace, the routing of orders to third party fulfillers is also automated.

5. There are more than 10,000,000 creative works currently offered for sale by third-party artists on the Redbubble marketplace.

6. Redbubble does not have any physical presence or business operations in the State of Ohio. Redbubble does not now and has never owned or operated any offices, facilities, telephone listings, mailing addresses, bank accounts, or other personal or real property in Ohio. None of its officers, directors, or employees work or reside in Ohio, and no meetings of its boards of directors or shareholders have been held in Ohio. It does not have a registered agent for service of process in Ohio.

7. In order to host the online platform and provide facilitation services for the third party transactions conducted via its marketplace, Redbubble uses third-party owned and operated IT facilities and data centers. These facilities are located in Florida and Virginia. Redbubble uses no facilities in the State of Ohio.

8. Redbubble uses outsourced contractors to perform various functions. None of these contractors are located in the State of Ohio.

9. Redbubble neither engages in any advertising activities that are specifically directed toward residents of the State of Ohio nor advertises in publications directed primarily at them.

10. In order for a third party artist to upload and sell a creative work on the Redbubble marketplace, he or she must become a registered user of the Redbubble website. Not until signing up as a Redbubble registered user may an artist upload creative works to the portfolio section of his or her account and list them for sale on the Redbubble marketplace.

11. All registered users of the Redbubble marketplace are required to comply with the Redbubble User Agreement and various published policies, which clearly require that such users of the marketplace, not Redbubble, possess the applicable rights to upload and sell their works on the marketplace. Those agreements and policies further specify that the third-party artists, not Redbubble, are ultimately responsible for such content and are the sellers of the works.

12. When a third-party artist uploads a creative work to sell through the Redbubble marketplace, he or she has control over the work and must:

- specify, from a defined list, the physical product or products to which the work may be applied;
- set the price for each product; and
- input the text for one or more keyword tags and a title for the work so that other users of the website may browse or search the marketplace for the creative work.

Whether a work forms part of the search results will depend on the keyword tags and title, which are created solely by the uploading user.

13. Upon completion of the upload process by a Redbubble user, the work is automatically displayed for sale on the Redbubble marketplace. From a technical perspective, it

is not currently possible for Redbubble to screen works before they are uploaded. Given the high volume of works uploaded to the marketplace, pre-upload screening of all listings would also be impractical from a logistical perspective, as depending on the time of year, between 10,000 and 30,000 works are uploaded to the Redbubble marketplace each day.

14. Once a consumer places an order for a product bearing the image of an uploaded work, software on the Redbubble website automatically causes the order to be sent to a third party fulfiller, which manufactures the ordered product. After the third party fulfiller completes manufacture of the product, a third party postal, courier or shipping service delivers the product from the third party fulfiller directly to the address specified by the consumer. Redbubble keeps no inventory of the products offered for sale on the marketplace, and no such product ever passes through any facilities owned or operated by Redbubble.

15. Each time a consumer purchases a product from a third party artist through the platform, Redbubble collects the total purchase price on behalf of the third-party artist and the platform automatically remits the sale proceeds to the artist, less:

- costs payable to third-party manufacturers;
- costs payable to third-party postal, courier or shipping services; and
- Redbubble's service fee.

16. Each registered user of the Redbubble website is required to comply with the Redbubble User Agreement, a copy of which is attached to this Declaration as Exhibit A. This Agreement is also on the Redbubble web site at www.redbubble.com/agreement.

17. Each third-party artist and consumer who uses the Redbubble web site is subject to the Redbubble IP/Publicity Rights Policy, a copy of which is attached to this Declaration as Exhibit B. This document is also available on the Redbubble web site at

<https://help.redbubble.com/hc/en-us/articles/201579195>.

18. Each third-party artist and consumer who uses the Redbubble web site is subject to the Redbubble Community Guidelines, a copy of which is attached to this Declaration as Exhibit C. This document is also available on the Redbubble web site at <https://help.redbubble.com/hc/en-us/articles/202270929>.

19. Each third-party artist and consumer who uses the Redbubble web site is subject to the Redbubble Content and Suspension Policy, a copy of which is attached to this Declaration as Exhibit D. This document is also available on the Redbubble web site at <https://help.redbubble.com/hc/en-us/articles/201350809-Content-Suspension>.

20. Redbubble's User Agreement and related policies are also designed to discourage, prevent and punish the infringement of intellectual property and other unlawful activities on the marketplace, and Redbubble implements and diligently enforces the policies and principles set forth in these documents. In particular, upon receiving notice of allegedly infringing listings, Redbubble promptly removes the identified listings, and treats further communications regarding those listings in accordance with its IP/Publicity Rights Policy, including subjecting infringers to Redbubble's repeat infringer policy. In addition, Redbubble has in certain circumstances, and in consultation with and at the direction of content owners, engaged in some proactive policing of its site for particular works or categories of works.

21. On or about May 12, 2016, Redbubble received a cease and desist letter at its San Francisco office from outside counsel for Victoria's Secret Stores Brand Management, Inc. ("Victoria's Secret"). Attached to this Declaration as Exhibit E is a true and correct copy of that letter. This letter was the first complaint or notice of alleged infringement that Redbubble had received from Victoria's Secret.

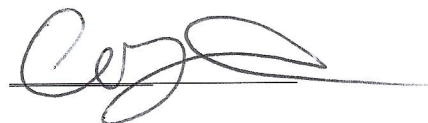
22. Upon receiving the letter from Victoria's Secret, Redbubble promptly removed all of the listings identified in that correspondence that contained Plaintiff's marks, and in a letter dated May 19, 2016, notified Plaintiff of this fact and offered a phone call to discuss Plaintiff's concerns further. Attached to this Declaration as Exhibit F is a true and correct copy of that letter.

23. Victoria's Secret did not respond to Redbubble's invitation, nor did it identify any additional listings that it believed were infringing. Instead, two months after receiving Redbubble's correspondence and without any further communication, Plaintiff filed the Complaint in this action.

24. I had another employee in our legal department prepare a summary of the listings identified in Victoria's Secret's Complaint. Based on that summary, none of the sellers of the listings identified in the Complaint are located in Ohio. Moreover, while those listings resulted in sales to four customers in Ohio, LinkedIn profiles for two of these customers indicate that one is a paralegal at L-Brands, Victoria's Secret's parent company, and the other is a paralegal at Squire, Patton & Boggs, Victoria's Secret's outside counsel. There were only two sales to Ohio customers that are not affiliated with Victoria's Secret, with a total sales price of less than \$3.00. .

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of September, 2016 at San Francisco, California.

A handwritten signature in black ink, appearing to read 'Corina N. Davis', written over a horizontal line.

Corina N. Davis